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MAY 15 1996

May 15, 1996

BY HAND

William F. Caton, Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

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SPECIAL COUNSEL
JEROLD L. JACOBS

Re: MM Docket No. 94-155
FM Table of Allotments
Big Pine Key, Key Colony Beach,
Naples, and Tice, Florida

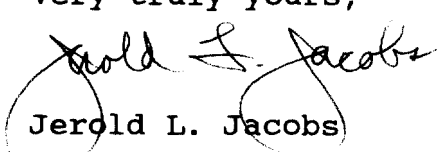
DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

Enclosed herewith for filing, on behalf of Palm Beach Radio Broadcasting, Inc. and Gulf Communications Partnership, are an original and four (4) copies of their "**SUPPLEMENT TO JOINT REPLY COMMENTS MOOTING SOLE OBJECTION TO JOINT RESOLUTION**" in the above-referenced proceeding.


Please direct all inquiries and communications concerning this matter to the undersigned.

Very truly yours,


Jerold L. Jacobs

Enc.

cc: As on Certificate of Service (all w/enc.)



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MAY 15 1996

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
FILING CLERK

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 94-155
Table of Allotments,)
FM Broadcast Stations) RM-8486
(Big Pine Key, Key Colony Beach,)
Naples, and Tice, Florida))

To: Chief, Allocations Branch

SUPPLEMENT TO JOINT REPLY COMMENTS
MOOTING SOLE OBJECTION TO JOINT RESOLUTION

PALM BEACH RADIO BROADCASTING, INC. ("Palm Beach"), licensee of Station WPBZ(FM), Indiantown, Florida, and **GULF COMMUNICATIONS PARTNERSHIP** ("Gulf"), permittee of Station WAAD(FM), Tice, Florida, by its attorneys, hereby request that their March 6, 1995 "Joint Reply Comments" be supplemented in accordance with this pleading to reflect intervening changes in the FM Table of Allotments which moot the sole objection to Commission grant of the "Joint Resolution" contained in the Joint Reply Comments. In support whereof, the following is shown:

1. In Paragraph 7 of the Joint Reply Comments, the Joint Petitioners (Palm Beach's predecessor -- Amaturio Group, Ltd. -- and three other Florida broadcast entities -- WSUV, Inc. (WROC), GGG Broadcasting, Inc. (WJBW), and Glades Media Company (WAFC-FM)) and Gulf requested that a "Joint Resolution" hybrid counterproposal be placed on public notice in lieu of the two counterproposals that the Joint Petitioners and Gulf had filed. The parties urged that this was in the paramount public interest since such a streamlined Public Notice will avoid "protracted litigation over mutually exclusive counterproposals, conserving the Commission's resources by avoiding the need to perform a comparative analysis of mutually exclusive proposals". Id. at ¶8.

2. In this Supplement, Palm Beach and Gulf again request that the "Joint Resolution" -- as restated below -- alone should be placed on public notice as a "global solution" to the mutually exclusive allotment proposals in this proceeding. Procedurally, such action is justified by the withdrawal of the Joint Petitioners' and Gulf's counterproposals, which the Joint Petitioners and Gulf previously stated that they would do (Joint Reply Comments at ¶10) if the Commission agrees to place the "Joint Resolution" on public notice alone. Importantly, because all of the counterproponents consented to this "streamlined" approach, any procedural objection should be moot, since the time for expressions of interest in frequencies in this proceeding by non-parties has passed and no one can demand the right to comment on a counterproposal which the proponents have withdrawn.

3. Additionally, and most importantly, the "Joint Resolution" -- as restated below -- contains a minor modification of Gulf's proposed upgrade frequency -- the substitution of Channel 292C2 at Tice, Florida for Channel 229C2 -- which allows Channel 228A at Naples to remain unchanged. This modification became technically possible only in the last few weeks as a result of Commission rulemaking actions in MM Docket Nos. 89-455 and 92-125. The Tice modification is very important because it resolves the only objection filed against any of the rulemaking proposals or counterproposals in this proceeding. Specifically, the Palmer Broadcast Group ("Palmer"), licensee of Station WNOG-FM, Naples, Florida, previously filed Comments and Reply Comments which urged the Commission not to require Palmer to change channels. As the attached Allocation Study for Channel 292C2 at Tice, prepared by Clarence M. Beverage of Communications Technologies, Inc., using the reference coordinates of 26-29-24 and 81-50-08, shows, if Channel 292C2 is allotted to Tice, Station WNOG can remain on

Channel 228A at Naples.¹ Under these circumstances, Palmer's previous objections have become moot, and it has authorized undersigned counsel to state that it does not object to grant of the "Joint Resolution" as restated below.

Joint Resolution

<u>FL Community</u>	<u>Present Chan.</u>	<u>Proposed Chan.</u>	<u>Call Sign</u>
(1) Indiantown	276C2	276C1	WPBZ
(2) Naples	276C3	284C3	WSGL
(3) Big Pine Key	284C	281C1 ²	WWUS
(4) Key Colony Beach	280C2	267C2	WKKB
(5) Naples	228A [NO CHANGE]	228A ³	WNOG
(6) Ft. Myers Villas	292A	275C2	WROC
(7) Clewiston	292A	258C3	WAFC
(8) Jupiter	258A	292C3	WJBW
(9) Tice	229A	292C2 ⁴	WAAD

¹ Palmer notes that an additional public interest benefit flowing from this minor modification of the "Joint Resolution" is that, remaining on Channel 228A, WNOG may increase power from 3 kW to 6 kW, which is not otherwise possible.

² The original "Joint Resolution" specified Channel 281C. In Paragraph 8 below, Palm Beach and Gulf explain why the Commission may now appropriately advance Channel 281C1 as the substitute channel for WWUS's Channel 284C.

³ The original "Joint Resolution" proposed substituting Channel 292A for Channel 228A at Naples. However, as explained above, that change was opposed by the licensee and is no longer necessary. Therefore, the "Joint Resolution" has been modified to leave Channel 228A unchanged at Naples.

⁴ The original "Joint Resolution" specified that, in accordance with Gulf's counterproposal, Channel 229C2 would be reallocated to Estero, instead of remaining in Tice, and WAAD's construction permit would be modified accordingly. However, as explained above, Gulf is willing to withdraw its counterproposal if the Commission places the "Joint Resolution" alone on public notice. Then, Gulf's upgrade proposal would revert to what was originally proposed in the Notice of Proposed Rulemaking ("NPRM") -- substituting Channel 229C2 for Channel 229A at Tice. However, as explained above, Palmer's objection to changing frequencies is mooted if Channel 292C2 (instead of Channel 229C2) is substituted for Channel 229A at Tice. Therefore, this Supplement proposes that minor modification of the "Joint Resolution".

4. It is well established that the "Commission may allot an alternate channel in order to resolve conflicts between proposals". See FM Table of Allotments (Salem and New Martinsville, WV), DA 95-2391 n.4 (Mass Media Bur. 1995), citing Pinewood, SC, 5 FCC Rcd 7609 (1990). Similarly, the Commission has held that "it is appropriate to suggest in reply comments alternate channels for communities at issue in a proceeding". See FM Table of Allotments (Corpus Christi and Three Rivers TX), DA 95-2434, ¶5 (Mass Media Bur. 1996). If placing an agreed-to "global solution," such as the modified "Joint Resolution" on public notice will resolve conflicts between proposals, the Commission should feel free to do so (with the parties' consent) at the public notice stage, rather than waiting until it issues a Report and Order to announce how it will resolve conflicts. Palm Beach and Gulf submit that complex proceedings like this one require creative solutions in order to conserve Commission resources and expedited the initiation of upgraded service. Placing the modified "Joint Resolution" alone on public notice is such a solution.

5. To help assure the Commission that the "Joint Resolution" -- as restated above -- will achieve the above-stated goal of simplifying this proceeding and expediting Commission action on the merits, Palm Beach and Gulf present the following summary demonstrating that the "Joint Resolution" moots any objections which have already been filed against the NPRM or any of the counterproposals and is also fully consistent with Commission policy and case precedents:

**A. Compliance with Columbus, Nebraska
"Two Substitution" Policy (59 RR 2d 1184 (1986))**

6. On its face, the "Joint Resolution" appears to require eight (8) channel substitutions. However, five of the proposed substitutions involve the Joint Petitioners and Gulf

-- nos. (1), (6), (7), (8), and (9). In addition, by letter dated October 19, 1995, addressed to the Chief, Allocations Branch, Crain Communications, Inc. ("Crain"), licensee of Station WWUS(FM), Big Pine Key, Florida, advised the Commission that Station WWUS does not oppose the substitution of Channel 281C1 for Channel 284C (substitution no. (3)). Thus, only two of the eight substitution proposals in the "Joint Resolution" are non-consensual: nos. (2) and (4). Hence, the "Joint Resolution" is fully consistent with the Columbus, Nebraska "two substitution" policy, especially since it is the result of two rulemaking petitions -- filed by Gulf and by the Joint Petitioners. It is well established that the Columbus, Nebraska policy allows two non-consensual channel substitutions per petition. See FM Table of Allotments (Boalsburg, et al. PA), 6 FCC Rcd 4296, 4299 ¶14 and n. 11 (Mass Media Bur. 1991)(by implication); FM Table of Allotments (Rock Valley and Sibley, IA et al.), 5 FCC Rcd 6444 ¶2 (Mass Media Bur. 1990)(rulemaking commenced where neither of two rulemaking proposals in same proceeding required more than two existing stations to change channels), aff'd, 6 FCC Rcd 5867 (Mass Media Bur. 1991).

**B. Consents by Stations Which May Need
To Change Transmitter Sites**

7. The Joint Petitioners' counterproposal included letters of consent by Key Chain, Inc. ("Key Chain"), licensee of Station WKRY(FM), Key West, Florida, and Schefflera, Inc., licensee of Station WJBX(FM), Fort Myers Beach, Florida, to change transmitter sites if necessary to carry out the Joint Petitioners' frequency change proposals. Schefflera, Inc.'s consent remains in force. However, Key Chain withdrew its consent by a September 15, 1995 pleading entitled "Withdrawal of Consent of Key Chain, Inc."

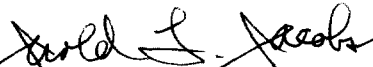
8. In its November 13, 1995 "Comment" on Key Chain's action, Palm Beach explained that implementation of the "Joint Resolution" no longer requires Key Chain's consent. The reason is that when the Joint Petitioners originally sought Key Chain's consent to change transmitter sites, it appeared that Crain's Station WWUS would have to be protected as a full Class C station in this proceeding. However, by pleadings filed on October 19, 1995, Crain asked the Commission to dismiss its challenge to the Bureau's January 11, 1995 Letter Order downgrading WWUS to Channel 284C1. The Bureau granted Crain's dismissal request by letter dated October 27, 1995. Under these circumstances, it is now unnecessary for the Joint Petitioners to propose substituting Channel 281C for WWUS's previous Channel 284C in this proceeding. Rather, the Joint Petitioners (and the Commission) may properly propose that Channel 281C₁ be substituted for Channel 284C₁ at Big Pine Key. As the FM spacing studies already submitted in this proceeding indicate, moving Station WWUS to Channel 281C₁ (as opposed to Channel 281C) does not require Station WKRY to change transmitter sites. Hence, since it is no longer necessary to change Key Chain's site, Key Chain's withdrawal of consent has no decisional significance.

WHEREFORE, in light of the foregoing, Palm Beach and Gulf urge that the Commission should place the "Joint Resolution" -- as restated above -- on a 15-day public notice for counter-proposal reply comments immediately. This action will simplify the existing proceeding and

thereby result in the expedited availability of upgraded radio service by five (5) Florida FM stations to at least an additional 1,229,204 persons.

Respectfully submitted,

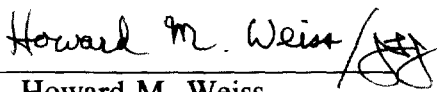
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Dated: May 15, 1996

TABLE I
ALLOCATION STUDY CH 292C2
TICE, FLORIDA

APRIL 1996

Search of channel 292C2 (106.3 MHz), at N. 26 29 24, W. 81 50 8.

CALL	CITY	ST	CHN	CL	S	DIST	SEPN	BRNG	CLEARANCE
ALC	Englewood	FL	290	A	U	73.6	55.0	315.2°	18.6
ALC	Englewood	FL	290	A	U	73.6	55.0	315.2°	18.6
NEW	Englewood	FL	290	A	C	73.7	55.0	322.6°	18.7
ALC	Avon Park	FL	292	A	U	123.3	166.0	16.0°	-42.7 ¹
ALC	Clewiston	FL	292	A	U	96.3	166.0	75.4°	-69.7 ²
ALC	Fort Myers Villas	FL	292	A	U	13.8	166.0	309.5°	-152.2 ³
WAFC	Clewiston	FL	292	A	D	96.3	166.0	75.4°	-69.7 ²
WAFCFM	Clewiston	FL	292	A	L	96.3	166.0	75.4°	-69.7 ²
WJBW	Jupiter	FL	292	C3	A	177.5	177.0	76.7°	0.5
WLVUFM	Holiday	FL	292	C2	A	216.6	190.0	336.3°	26.6
WLVUFM	Holiday	FL	292	C3	A	216.6	177.0	336.3°	39.6
WNOG	Naples	FL	292	A	A	42.2	166.0	164.5°	-123.8 ⁴
WROCFM	Fort Myers Villas	FL	292	A	D	2.5	166.0	312.3°	-163.5 ³
WROCFM	Fort Myers Villas	FL	292	A	L	2.5	166.0	312.3°	-163.5 ³
WROCFM	Fort Myers Villas	FL	292	A	C	2.5	166.0	312.3°	-163.5 ³
WSGL	Naples	FL	292	C3	A	41.9	177.0	164.2°	-135.1 ⁵
WSRZFM	Sarasota	FL	292	A	D	116.5	166.0	323.6°	-49.5 ⁶
WSRZFM	Sarasota	FL	292	A	A	119.0	166.0	322.0°	-47.0 ⁶
WSRZFM	Sarasota	FL	292	A	L	119.0	166.0	322.0°	-47.0 ⁶
WTRU	Jupiter	FL	292	C3	A	177.5	177.0	76.7°	0.5
WWOJ	Avon Park	FL	292	A	D	126.6	166.0	14.5°	-39.4 ¹
WWOJ	Avon Park	FL	292	A	L	123.3	166.0	16.0°	-42.7 ¹
WZMQ	Key Largo	FL	292	C2	A	211.5	190.0	143.5°	21.5
ALC	Sarasota	FL	293	C2	V	135.8	130.0	322.6°	5.8
WSRZFM	Sarasota	FL	293	C2	A	135.8	130.0	322.6°	5.8
WSRZFM	Sarasota	FL	293	C3	A	119.0	117.0	322.0°	2.0
WSRZFM	Sarasota	FL	293	C2	A	130.2	130.0	327.9°	0.2

¹ Ordered to Ch 256C3, MM Docket No. 89-455.

² To Ch 258C3.

³ To Ch 275C2.

⁴ To remain on Ch 228A.

⁵ To Ch 284C3

⁶ Ordered to Ch 293C2, MM Docket No. 89-455.

CERTIFICATE OF SERVICE

I, Yvonne Corbett, a secretary in the law offices of Rosenman & Colin LLP, do hereby certify that on this 15th day of May, 1996, I have caused to be mailed, or hand-delivered, a copy of the foregoing **"SUPPLEMENT TO JOINT REPLY COMMENTS MOOTING SOLE OBJECTION TO JOINT RESOLUTION"** to the following:

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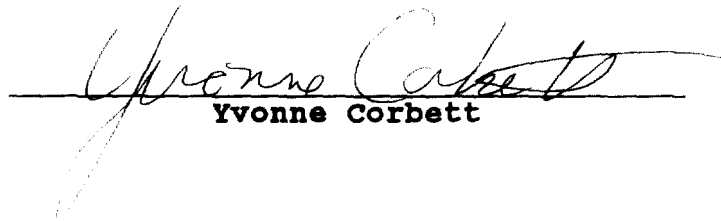
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Yvonne Corbett

***BY HAND**